

In the Matter of Merchant Mariner's Document No. Z-255451-D2 and
all other Seaman Documents

Issued to: Prisco P Capangpangan

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1322

Prisco P. Capangpangan

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 29 January 1962, an Examiner of the United States Coast Guard at New Orleans, Louisiana revoked Appellant's seaman documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as an oiler on board the United States SS ALBERT E. WATTS under authority of the document above described, on 2 August 1961, Appellant assaulted and battered Chief Cook Roberts with a dangerous weapon and inflicted grievous bodily injuries.

At the hearing, Appellant was represented by counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the testimony of the Chief Cook and other witnesses.

Appellant testified in his defense.

At the end of the hearing, the Examiner rendered the decision in which he concluded that the charge and specification had been proved. The Examiner then entered an order revoking all documents issued to Appellant.

FINDINGS OF FACT

On 2 August 1961, Appellant was serving as an oiler on board the United States SS ALBERT E. WATTS and acting under authority of his document while the ship was at sea.

During a poker game which ended about 1530 on this date, Appellant won some money and the Chief lost \$414. After the game, the Chief Cook and utilityman Coleman went to the Appellant's room and demanded their money back because Appellant had cheated

according to them. Appellant agreed to discuss it after he got off watch and left to stand the 1600 to 2000 watch. Appellant was eating at 1700 when he was told by Roberts that Appellant would be injured or killed if he did not return the money. Appellant took a dinner knife to the engine room and sharpened it to protect himself against Roberts.

Roberts and Coleman were waiting for Appellant at the end of his watch. When Appellant refused to give money to Roberts, he and Coleman urged Appellant to go with them but Appellant left to report the matter to the Master. A large number of the other crew members were then present. Roberts blocked Appellant's path and raised his hand. Fearful of being injured by the much larger man, Appellant took out the sharp knife and stabbed the Chief Cook in the chest and then in the back before he fell. Ten stitches were taken when Roberts was hospitalized.

Appellant has no prior record.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the testimony clearly shows that Roberts provoked the incident by using force on Appellant after Roberts and Coleman, both large men, had approached Appellant several times to arrange a meeting in order to get some of their money back or to cause Appellant great bodily harm. Roberts was the aggressor when he detained Appellant from going to report this matter to the Master. Appellant used reasonable force in self-defense to prevent imminent danger to himself.

Alternatively, the order of revocation is excessive in view of the factual situation, Appellant's clear record as a seaman, and his good character as a family man. This order creates a severe personal hardship because Appellant has five children and no other livelihood.

APPEARANCE: Roccaforte and Rouselle of New Orleans, Louisiana,
 by Frank W. Roccaforte, Esquire, of Counsel.

OPINION

Under these circumstances, with which Appellant agreed in his testimony, the assault with a deadly weapon was not justified. Although Roberts was the initial aggressor and threatened Appellant, there was no basis for a reasonable belief that Appellant was in imminent danger of great bodily harm when he stabbed the Chief Cook. Earlier, Appellant was not injured when he was alone in his room with Roberts and Coleman shortly after the poker game ended. At the time of the stabbing, numerous other

members of the crew were present to protect a small man like Appellant from being beaten by the two larger seamen. The Second Assistant Engineer did not leave Appellant until he saw that many others were present at the meeting with Roberts and Coleman. Therefore, it is my opinion that the force employed by Appellant in self-defense was excessive under the circumstances.

The order of revocation will not be modified. This was a deliberate act which Appellant had anticipated doing if the Chief Cook attempted to use force against Appellant. Despite the mitigating factors present, this is too serious an offense to merit reduction of the order.

ORDER

The order of the Examiner dated at New Orleans, Louisiana, on 29 January 1962, is AFFIRMED.

E. J. Roland
Admiral United States Coast Guard
Commandant

Signed at Washington, D. C., this 2nd day of August 1962.